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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/676,876 09/29/00 LIBRIZZI

J JBP-521

EXAMINER

HM22/0620

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NEW BRUNSWICK NJ 08933-7003

GEORGE, K

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

06/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Applicati n N .

09/676,876

Applicant(s)

LIBRIZZI ET AL.

Examin r

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

### **DETAILED ACTION**

Claims 1-15 are pending in this application.

#### ***Information Disclosure Statement***

1. The information disclosure statement filed April 11, 2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

#### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1, 2 and 12-15, drawn to a method of calming a mammal,
  - II. Claims 3, 4 and 12-15, drawn to a method of increasing smiling of a human,
  - III. Claims 5-7 and 12-15, drawn to a method of reducing crying in a human,
  - IV. Claims 8, 9 and 12-15, drawn to a method of improving sleep behaviors,
  - V. Claims 10-15, drawn to a method of soothing a mammal.

Inventions I, II, III, IV and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions all contain the same effective amount of a sensory fragrance, however, it is used to treat several unrelated afflictions.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Michele Mangini on June 14, 2001 a provisional election was made with traverse to prosecute the invention of Group V, claims 10-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Mettler (US 5,891,427).

Mettler teaches a vitaminized air freshener and room deodorizer comprising a fragrance oil, solublizable vitamins, and a propellant. The solublizable vitamins of the prior art can be vitamin A, vitamin C or vitamin E (col. 3, lines 25-28). The fragrance oil can be any fragrance such as wood, orange, rose or lavender (col. 3, lines 33-41). The prior art teaches the composition to be dispensed by use of automated delivery

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systems, compressed fiber pads through which air can be forced via a fan or spray cans (col. 6, lines 33-45).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cronk et al. (US 6,244,265).

Cronk discloses a personal care composition in the form of an adhesively applied external nasal strip containing medications and fragrances. Fragrances of the compositions can be created by blending materials comprising odoriferous essential oils, extracts from woods, flowers, resins, etc. (col. 9, lines 39-43). Other fragrances can be classified by volatility such as high volatile (i.e. benzaldehyde, benzyl acetate or citronellol), or less volatile (i.e. benzyl salicylate or methyl dihydrojasmonate) (col. 9, lines 65-67 bridging col. 10, lines 1-39). The prior art does not teach the concentrations of the fragrances as claimed by applicant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made through routine experimentation to determine the preferred concentrations of the fragrance to achieve the desired effect. This is in the absence of any clear showing of unexpected result attributable to the specific concentrations of fragrances as employed by applicant in the instant application.

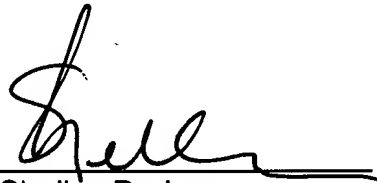
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

KMG

A handwritten signature in black ink, appearing to read 'Shelley', with a horizontal line drawn underneath it.

Shelley Dodson  
Primary Examiner  
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